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OFFICE OF PETITIONS

In re Application of :
Kinoshita, et al. :
Application No. 09/814,720 : DECISION ON PETITION
Filed: March 23, 2001 :
Attorney Docket No. 205006US2 :

This is a decision on the petition, filed September 4, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to properly and timely respond to the final Office action of November 1, 2006, which set a three (3) month shortened statutory period for reply. Applicants filed an amendment after final on March 27, 2007 with a request for a two month extension of time and credit card authorization for \$450.00. On April 13, 2007, the Office mailed an Advisory action, informing applicants that the amendment failed to place the application in *prima facie* condition for allowance. The Office has no record of receiving further correspondence from applicants. A proper reply was due on or before April 1, 2007.

Petitioner states that a proper reply was in fact timely filed on April 27, 2007. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on April 27, 2007 of, *inter alia*, a RCE transmittal, a request for an extension of time for the third month, and credit card authorization for \$1,360. A copy of the previously submitted reply accompanies the petition.

The RCE transmittal and request for extension of time acknowledged as having been received in the USPTO on April 27, 2007 is not of record in the application file and has not to date been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the RCE transmittal and the extension of time were timely received in the USPTO but lost after receipt thereof. It is noted that a review of Office financial records for the

above-identified application reveals that a \$790.00 RCE fee and a \$570.00 extension of time were received on mailroom date April 27, 2007.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on April 27, 2007.

This application is being referred to Technology Center AU 2616 for appropriate action in the normal course of business on the timely filed reply resubmitted with petition.

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